IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs May 19, 2003

ERIC J. NUNLEY v. TENNESSEE DEPARTMENT OF CORRECTION, ET AL.

Appeal from the Chancery Court for Davidson County
No. 02-1585-1 Irvin H. Kilcrease, Chancellor

No. M2002-02032-COA-R3-CV - Filed August 27, 2003

The petitioner, Eric J. Nunley, a prisoner in state custody at West Tennessee State Prison in Henning, brought suit against the Department of Correction ("the Department") and its then-Commissioner, Donal Campbell. Nunley alleges that his request for "placement at a minimum security facility" was denied. He contends that the denial was based upon the fact that "he allegedly had an escape charge and/or history." He claims that in 1992 he pleaded guilty to a "breach of trust" violation and that this violation – by virtue of a "new rule, regulation, law, policy and/or practice" – is now considered as a part of his "escape history" precluding his placement at a minimum security facility. Specifically, Nunley challenges his security reclassification from minimum security trusty to minimum direct custody. He seeks a writ of certiorari, a declaratory judgment, and injunction relief. He relies, in part, on the Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-101, *et seq*. (1998) ("the UAPA"). The trial court, acting on the defendants' Tenn. R. Civ. P. 12.02(6) motion, dismissed Nunley's petition for failure to state a claim upon which relief can be granted. Nunley appeals, contending that the application of the "new rule, regulation, law, policy and/or practice" to his earlier infraction violates the prohibition against *ex post facto* laws and that the defendants are acting in an "arbitrar[y], illegal, and unconstitutional" manner. We affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed; Case Remanded.

CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which HOUSTON M. GODDARD, P.J., and D. MICHAEL SWINEY, J., joined.

Eric J. Nunley, appellant, *pro se*, Hennning, Tennessee.

Paul G. Summers, Attorney General and Reporter, and Stephen R. Butler, Assistant Attorney General, for the appellees, Tennessee Department of Correction and Donal Campbell, Commissioner.

MEMORANDUM OPINION

Our affirmance of the trial court's judgment is pursuant to our Rule 10.[1]

Generally speaking, the security classification of a prisoner does not implicate the *ex post facto* prohibition. ***Jaami v. Conley***, 958 S.W.2d 123, 125 (Tenn. Ct. App. 1997). "Though regulations for the classification of prisoners normally take into account the inmate's crime and sentence, their primary purpose is not punishment, but security." ***Id***. "A state prison inmate has no right to a particular classification under state law, and prison officials must have broad discretion, free from judicial intervention, in classifying prisoners in terms of their custodial status." ***Id***. (citing 60 Am. Jur. 2d *Penal and Correctional Institutions* § 34 (1979)).

Nunley attempts to proceed by way of a writ of certiorari. The availability of the writ is controlled by the provisions of Tenn. Code Ann. § 27-8-101 (2000). That statute provides, in pertinent part, as follows:

> The writ of certiorari may be granted whenever authorized by law, and also in all cases where an inferior tribunal, board, or officer exercising judicial functions has exceeded the jurisdiction conferred, or is acting illegally, when, in the judgment of the court, there is no other plain, speedy, or adequate remedy.

In the instant case, the facts in the petition do not reflect action by "an inferior tribunal, board, or officer exercising judicial functions." ***Id***. Furthermore, we know of no other statute authorizing the writ under the facts of this case. Accordingly, we conclude that the writ is not available to Nunley. *See* ***Utley v. Rose***, 55 S.W.3d 559, 563 (Tenn. Ct. App. 2001).

Nunley also relies upon the Declaratory Judgment Act, Tenn. Code Ann. § 29-14-101, *et seq*. (2000) ("the DJA"). "There is no evidence the General Assembly affirmatively authorized suits against the State when it enacted [the DJA]." ***Watson v. Tennessee Dept. of Corr.***, 970 S.W.2d 494, 496 (Tenn. Ct. App. 1998). *See also* ***Utley***, 55 S.W.3d at 564. The DJA is not implicated by the facts set forth in Nunley's petition.

Nunley also seeks a declaration of his rights under the UAPA. The petition fails to allege sufficient facts to bring him within the ambit of the UAPA. Before a prisoner can bring an action

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[1] Rule 10 of the Rules of the Court of Appeals provides as follows:

> This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION", shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

under the UAPA, he or she "must first petition the agency for a declaratory order, and be refused." ***Utley***, 55 S.W.3d at 562 (citing Tenn. Code Ann. § 4-5-225(b). The petition before us fails to show that Nunley complied with this requirement. *See also* ***Jaami***, 958 S.W.2d at 127. Furthermore, there is clear precedent that "regulations for the classification of prisoners do not fall within the ambit of the UAPA." ***Id***.

In summary, we agree with the trial court that this case does not involve a violation of the *ex post facto* prohibition and that the trial court lacked jurisdiction to otherwise consider Nunley's petition.

For all of the foregoing reasons, we affirm the judgment of the trial court. Costs on appeal are taxed to Eric J. Nunley. This case is remanded for collection of costs assessed below.

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CHARLES D. SUSANO, JR., JUDGE